

CHAPTER VII

MISCELLANEOUS

Section 297:— Authorities before whom affidavit may be sworn:--(1) Affidavit to be used before any court under this code may be sworn or affirmed before--

- a) any Judge or Judicial or Executive Magistrate; or
- b) any Commissioner of Oaths appointed by a High Court or Court of Session; or
- c) any Notary appointed under the Notaries Act 1982 (83 of 1982)

2. Affidavit shall be confined to, and shall state separately, such facts as the deponent is able to prove from his own knowledge and such facts as he has reasonable ground to believe to be true, and in the latter case, the deponent shall clearly state the grounds of such belief.

3. The Court may order any scandalous and irrelevant matter in the affidavit to be struck out or amended.

Section 309:—Power to postpone or adjourn proceeding:--(1) In every inquiry or trial, the proceedings shall be held as expeditiously as possible, and in particular, when the examination of witness has once begun, the same shall be continued from day to day until all the witnesses in attendance has been examined, unless the court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded.

(2) If the court, after taking cognizance of an offence or commencement of trial, finds it necessary or advisable to postpone the commencement of, or adjourn any inquiry or trial postpone it may from time to time, for reasons to be recorded, or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody:

Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time:

Provided further that when witness are in attendance, no adjournment or postponement shall be granted, without examining them, except for special reasons to be recorded in writing:

LAW FOR EXECUTIVE MAGISTRATES

Objective:-- The purpose of this section is to appreciate the evidence and cannot take the place of evidence itself.⁸⁴ It is intended to enable the Magistrate to understand better the evidence already laid before him and to test the evidence of witnesses examined and not to obtain additional information or to extract admissions from the accused.⁸⁵ Because the new materials will get in without any cross examination and moreover the court itself will become a witness. This section permits a presiding officer to make a local inspection, but if a commissioner is deputed to make inspection, he should appear in the witness box to make the statement on oath and should subject himself for the cross examination. Unless it is done the report or statement submitted by him cannot become evidence.⁸⁶

Time of local inspection:-- This section is so widely framed as to justify a local inspection at any stage, before framing the charge or even before recording evidence. But as per the objective of local inspection, the trying Magistrate should not visit the scene of occurrence before he has heard any evidence⁸⁷ and the Magistrate will be wise to defer his visit until he has heard the whole of the evidence.⁸⁸ Local inspection should be done in the presence of both parties and their lawyers after intimating them.⁸⁹

Section 311:--Power to summon material witness, or examine person present:--Any court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.

Section 345:--Procedure in certain cases of contempt--(1) When any such offence as is described in section 175, section 178, section 179, section 180 or section 228 of the Indian Penal Code (45 of 1860), is committed in the view of or presence of any Civil, Criminal or Revenue Court, the court may cause the offender to be detained in custody and may, at any time before the rising of the court on the same day, take cognizance of the offence and, after giving the offender a reasonable opportunity of showing cause why he should not be punished under this section, sentence the offender to fine not exceeding two hundred rupees, in default of payment of fine, simple imprisonment for a term, which may extend to one month, unless such fine be sooner paid.

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84. *Tirkha v. Nanak*, AIR 1927 All. 350; 28 Cr.L.J. 29; *Lalo Mahto v. Emperor*, 1942 Pat. 150; *Kissan Lal Agrwala v. Nagarmal Agarwala*, 1954 Assam 83; *Dawarka Prasad v. Ram Nath Modi*; 1951 VPI.
85. *Ajodhya Prasad Sonar v. Municipal Committee, Khurai* 37 Cr.L.J. 837.
86. *Shib Singh v. Sridhar*, 1953 All. 371 at p. 371.
87. *Girish Chunder Ghose v. Queen Empress*, ILR 20 Cal. 85; *Devi Prasad v. State of U.P.* 1973 All. Cr.R. 214.
88. *Hari Kishre Mitra v. Abdul Baki Miah*, ILR 21 Cal. 920.
89. *Appayya Naika v. State of Mysore*, (1963) 2 Mys.L.J. 369; (1964) 2 Cr.L.J. 313; AIR 1964 Mys. 177.

(2) In every such case the court shall record, the facts constituting the offence, with the statement (if any) made by the offender, as well as the finding and sentence.

(3) If the offence is under S.228 of the Indian Penal Code (45 of 1860), the record shall show the nature and stage of the judicial proceeding in which the court interrupted or insulted was sitting, and the nature of the interruption or insult.

Scope:-- Sections 175 IPC:-- Omission to produce a document before a public servant by a person legally bound to produce such document.

Section 178 IPC:-- Refusing oath when duly required to take oath by a public servant.

Section 179 IPC:-- Refusing to answer a public servant authorized to question.

Section 180 IPC:-- Refusing to sign a statement made to public servant, when legally required to do so.

Section 228 IPC:-- Intentional insult etc. to a public servant sitting in any stage of a judicial proceeding.

Section 345 Cr. P.C. :-- Is the general section for contempt committed in view or presence of the court, whereas Section 349 is the particular provision regarding the witnesses refusing to answer, the question as required U/S. 179 IPC.

There will be no contempt, unless the Magistrate is sitting in course of judicial proceeding and if it is intentional and in the presence of the court.

The provisions of this section should be applied then and there and at any rate before its rising, by the court in whose view or presence a contempt has been committed, which it considers should be dealt with Section 345 Cr.P.C.

When a proceeding U/S. 345 Cr.P.C. was instituted immediately after the reading out a final order and it was objected that the judicial proceedings having been concluded by reading of final order, the Court could not proceed U/S. 345. It was held that the accused was rightly convicted.⁹⁰

Proceeding U/S. 345 (2) & 345(3):-- This provides summary proceedings for the trial of direct contempt of court. In such a proceeding, the court is the Complainant, Prosecutor and the Judge. In order to safeguard the interests of the persons dealt with in a summary manner, the proceedings must show precisely the nature and the stage of judicial proceeding in which a court was sitting. Omission to record the proceeding in the manner laid down in this section would be fatal to the

90. *Queen Empress v. Saliq Ram*, 16 PR 1897, per Roe C.J.

proceedings.⁹¹ The provisions of the section must be construed as mandatory, calling for strict compliance.⁹² The record should contain the facts constituting the offence, with the statement, if any, made by offender, as well as the finding and sentence. In case of offences U/S. 228 IPC, the record must also show the nature and stage of judicial proceeding in which the court was interrupted or insulted and the nature of interruption or insult⁹³ and the offender was given an opportunity to clear his position.⁹⁴

Procedure to be followed:-

Section 345(1) requires that⁹⁵

- i) The facts constituting the offence should be stated by the court;
- ii) The statement (if any) of the accused should be recorded;
- iii) The finding and the sentence should be stated; and
- iv) in cases U/S. 228 of IPC., the nature and stage of the judicial proceedings in which the court was interrupted or insulted.

If on an opportunity being given to the accused, to make his statement, he further abuses and throws mud, then it cannot be urged on his behalf that he had no opportunity to make a statement in answer to the charge made against him or that his statement was not taken. The specific offences must be stated and opportunity of answering should be given to the offender.

Section 346:- Procedure where court considers that case should not be dealt under section 345:-(1) If the court in any case considers that a person accused of any of the offences referred to in Section 345 and committed in its view or presence should be imprisoned otherwise than in default of payment of a fine exceeding two hundred rupees should be imposed upon him, or such court is for any other reason of opinion that the case should not be disposed of under Section 345, such court, after recording the facts constituting the offence and the statement of the accused, as here-in-before provided, may forward the case to a Magistrate having jurisdiction to try the same, and may require security to be given for the appearance of such person before such Magistrate, or if sufficient security is not given shall forward such person in custody to such Magistrate.

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91. *State v. Nad Kishore*, 1968 Raj. L.W. 568.
 92. *Gurbaksh Singh v. State*, 1960 Punj. 211 at p. 213; *Janardan Prasad Mandal v. State of Bihar*, 1970 Cr.L.J. 1203; 1970 Bih. LJR 1039.
 93. *State v. Bahadesh Chandra Das*, (1963) 2 Cr.L.J. 668 : AIR 1963 Tripura 50; *Janardan Prasad Mandal v. State of Bihar*, 1970 Bih. LJR 1039; 1970 Cr.L.J. 1203.
 94. *Pyarelal v. State of Rajasthan* 1974 WLN 155.
 95. *Inderjit Singh v. Raj Kumar Gupta*, 1968 Cr.CJ. 1527 : ILR (1968) 2 Punj. 439; 1968 Cr. LJ 401. (1968) 70 Punj. LR 559.

(2) The Magistrate to whom any case is forwarded under this section shall proceed to deal with, as far as may be, as if it were instituted on a police report.

Trial to be by Officer other than the one before whom contempt was committed:-- This section distinctly contemplates that the trial is to be by a judicial officer other than the person before whom the contempt was committed. If he could do so, it would be in violation of the fundamental rule in the administration of justice i.e. no man can be a Judge in a case, where is he interested.

Section 349:-- Imprisonment or committal of person refusing to answer or produce document:-- If any witness or person called to produce a document or thing before a criminal court refuses to answer such questions as are put to him or to produce any document or thing in his possession or power which the court requires him to produce, and does not, after a reasonable opportunity has been given to him so to do, offer any reasonable excuse for such refusal, such court may, for reasons to be recorded in writing, sentence him to simple imprisonment, or by warrant under the hand of the Presiding Magistrate or Judge commit him to the custody of an officer of the court for any term not exceeding seven days, unless in the meantime, such person consents to be examined and to answer, or to produce the document or thing and in the event of his persisting in his refusal, he may be dealt with according to the provisions of section 345 or section 346.

Section 350:-- Summary procedure for punishment for non attendance by a witness in obedience to summons:-- (1) If any witness being summoned to appear before a criminal court is legally bound to appear at a certain place and time in obedience to the summons and without just excuse neglects or refuses to attend at that place or time or depart from the place where he has to attend before the time at which it is lawful for him to depart, and the court before which the witness is to appear is satisfied that it is expedient in the interests of justice that such a witness should be tried summarily, the court may take cognizance of offence and after giving the offender an opportunity of showing cause why he should not be punished under this section, sentence him to fine not exceeding one hundred rupees.

(2) In every such case the court shall follow, as nearly as may be practicable, the procedure prescribed for summary trials. This section empowers a criminal court to impose a fine on a witness for disobedience of summons, but before passing a sentence of fine, the court has to observe two things:--

a) A notice must be served on the offending witnesses to show cause, why he should not be punished under section 350 Cr. P.C.

b) Before actually imposing a fine, the court should follow the procedure prescribed for summons cases in the trial of witness. In other words, he should summarily try the witness.⁹⁶

⁹⁶ State of M.P. v. Premchand Kashvad. (1962) 2 Cr.L.J. 680 at p.680: 1961 Jab L.J 1342.

Section 373:— Appeal from orders requiring security or refusal to accept or rejecting surety for keeping peace of good behaviour—Any person—

- i) who has been ordered under section 117 to give security for keeping the peace or for good behaviour, or
- ii) who is aggrieved by any order refusing to accept or rejecting a surety under section 121,

may appeal against such order to the court of session:

Provided that nothing in this section shall apply to persons the proceedings against whom are laid before a Sessions Judge in accordance with the provisions of sub-section (2) or sub-section (4) of Section 122.

Appeals from the orders of Executive Magistrates:—

- a) Orders passed by Executive Magistrate U/S. 117 requiring security for keeping peace or for good behaviour and U/S. 121 refusing to accept or reject a surety, are appealable and such appeals shall lie to the court of sessions vide section 373.
- b) When an Executive Magistrate makes a complaint U/S. 340(1) for offences against the administration of justice, he functions as court within the meaning of section 340(4) read with section 195 and in that context, he is subordinate to the Court of Sessions for the purpose of appeal vide section 195(4).
- c) Orders of the Executive Magistrate convicting persons U/Ss. 345, 349 and 350 are appealable and such an appeal shall lie to the court of sessions.

Section 397:— Calling for records to exercise power of revision:—(1) The High Court or any Sessions Judge may call for and examine the record of any proceedings before any inferior Criminal Court situated within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.

Explanation:—

All Magistrates, whether Executive or Judicial and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purpose of this sub-section and of Section 398.

(2) The power of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

(3) If an application, under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.

All Executive Magistrates including District Magistrate and Additional District Magistrate are regarded as criminal courts inferior to the Sessions Judge for the purpose of exercise of the revision vide Ss. 397 & 398.

Judicial Order--The essence of a judicial proceeding is a declaration of the law on the particular case which has to be arrived at as the decision of certain legal relations.

Extra-Judicial orders not subject to revision--An administrative order cannot be interfered with in revision.⁹⁷ The High Court cannot revise an extra-judicial order passed by a Magistrate.⁹⁸

The Subordinate Courts cannot question the order of a Superior Court--Even if the order of the superior court calling for the record is not specified as having been passed under any particular provision of the law, the inferior criminal courts are bound to comply with the order and cannot question the propriety or correctness of the same.⁹⁹

Section 411-- Making over or withdrawal of cases by Executive Magistrates -- Any District Magistrate or Sub Divisional Magistrate may --

- a). Make over, for disposal, any proceeding which has been started before him, to any Magistrate subordinate to him;
- b) Withdraw any case from, or recall any case which he has made over to any Magistrate subordinate to him and dispose of such proceeding himself or refer it for disposal to any other Magistrate.

The Section 411 does not prescribe any particular procedure or mode for making over or withdrawal of cases. Therefore, transfers can be made on the order sheet or by even a separate memo.¹⁰⁰

97. *Sreemathu Rajah v. S.R. Prasad, Zamindar of Devarakota v. Kolli. Rangaswami*, AIR 1948 Mad. 234 at p. 234; but see *Ganpathi Muthaiyar v. Narayana Swami Vaithair* AIR 1957 Mad. 405.

98. *Empress v. Debidial*, 1883 AWN 25; *Mohammed Ahmed Khan v. Emperor*, AIR 1940 Oudh 416.

99. *Kedar Nath Geonaka v. Prasad*, 1965 BLJR 765.

100. *Munshi Bhagat v. State of Bihar*, 1980 LJ 46.

Section 412:— A Sessions Judge or Magistrate making an order under sections 408, 409, 410 or 411 Cr.P.C. shall record his reasons for making it.

If an accused/Counter petitioner has a reasonable apprehension that he would not get impartial and fair justice by a Magistrate in whose court his case is pending, then the case should be transferred. But the apprehension should be of the kind which a reasonable person can have and it should not be a mere allegation.

Where a District Magistrate made an order of transfer without recording any reason in writing and without giving notice to opposite party—is liable to be set aside.¹⁰¹

Any case U/S.411 means any proceeding or inquiry before an Executive Magistrate, such as, cases under Ss.107, 108, 109, 110, 133, 144, 145, 146 and 176.

Besides what has been stated herein before, the Executive Magistrates, while functioning as Criminal Courts, will have authority to exercise all such powers as have been conferred upon the courts under the provisions of the Criminal Procedure Code, provided that those power are also relatable to and exercisable in furtherance of their functions under the Code, as for e.g.

- i) Process to compel appearance.
- ii) Taking and recording evidence in inquiries.
- iii) Disposal of the property pending inquiry and at the conclusion of inquiry.
- iv) Forfeiture of bonds furnished to the Executive Magistrate under the Criminal Procedure Code.
- v) Issuing commission for examination of witness (S.284).
- vi) Holding local inspection (S.310).
- vii) Discharge of sureties U/S.444.
- viii) Punishing for criminal contempt of Court in view or in the face of the Court (S.345)
